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ORIGINAL

March 29, 2004

210420

The Honorable Vernon W. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, NW  
Washington, DC 20423-0001

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RE: STB Finance Docket No. 33388 (Sub-No. 91)  
CSX Corporation and CSX Transportation, Inc.,  
Norfolk Southern Corporation et. al – Control and  
Operating Leases/Agreements – Conrail Inc., et al.  
[General Oversight]

Dear Mr. Williams:

I am submitting in the above-captioned proceeding, an original and 10 copies of the comments of James Daley, Director of Economic Development for the County of Union, New Jersey.

Please date stamp and return one copy for our files. If you have any questions feel free to contact me at the above number.

Sincerely yours,

A handwritten signature in cursive script, appearing to read 'John D. Heffner'.

John D. Heffner

cc: Mr. James Daley

210420

*Testimony before the Surface Transportation Board  
April 2, 2004 Hearing  
Shared Assets Area and the Oversight of the split up and merger of Conrail*



**Introduction**

My name is James Daley. I am Director of Economic Development for the County of Union, New Jersey. Thank you for providing me the opportunity to address the Board on this critical issue.

I wish to speak today on the impact of the Conrail Shared Assets Organization on Union County and Northern New Jersey. First, I wish to give you a brief overview of the County and why it has an interest in the successful functioning of rail freight service within its borders in the northern New Jersey metropolitan area.

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**Overview**

The County is located approximately 15 miles to the southeast of midtown Manhattan. A population of 512,000 resides in an area of 103 square miles. The County of Union is one of the most densely populated counties in a state that is the most densely populated in the United States. Within the County's borders lies some of the most heavily used transportation facilities in the nation, including The Port Newark/Elizabeth container terminals, Newark Liberty International Airport, the Amtrak Northeast Corridor Line, the Garden State Parkway and the New Jersey Turnpike, and the Lehigh and Chemical Coast Main line freight routes of CSX, NS and CP railroads.

In addition to these facilities, there are 5 NJ Transit passenger rail lines as well as several Conrail Shared Assets Organization secondary and industrial branches. Interstate routes 1&9, 22 and 78 are heavily traveled truck routes traversing the County. Several petroleum and petro chemical port facilities can be found along the County's eastern border along the Arthur Kill. A recently upgraded general aviation airport in Linden serves as a reliever for the region.

A large component of this transportation activity is the movement of freight and goods. The County of Union has taken an active and leading role in ensuring that the transportation infrastructure within the County is able to sustain a viable economy both now and in the future, in addition to contributing to the quality of life of its citizens and visitors. With Union County at the epicenter of the entire New Jersey / New York Metropolitan Area's transportation network, we are uniquely impacted by the movement of all goods and people within and through this area.

The state of Union County's freight infrastructure is critical to the local, regional, and national economy. Thus, Union County has taken a proactive role in ensuring that its

facilities will meet the demands of a changing and growing economy while simultaneously addressing quality of life issues.

The economy is changing in this important respect: heavy manufacturing and related support industries have decreased in importance. However, these industries have been replaced by robust expansion in the importing, exporting, distribution and processing industries. Much of this activity has been fueled by a major change and increase in port activity. The Port of New York/New Jersey is the largest port on the East Coast, and the third largest in the nation. The port is projected to double in volume by 2010. In 2002 2.3 million TEU's were handled, which will increase to over 5 million by 2010.

These driving forces together with the general trend for businesses to serve the largest consumer market in the United States from closer-in facilities has had a dramatic impact on surface transportation logistics, particularly on how rail freight transportation needs to function if it is going to serve as a significant component in the regional goods movement network.

Union County has a comprehensive economic development and transportation infrastructure improvement program that assures it's economic and jobs base is maintained and expanded accordingly. A major effort has to be made to make rail service relevant to that effort. We can no longer be as truck dependent as in the past if the environmental, congestion mitigation and quality of life goals of the region are to be met.

There exists a serious capacity and compatibility issue on the area's road network. Host to the largest seaport on the east cost of North America combined with being located at the center of the world's richest consumer market, the County of Union has actively pursued alternates to the truck-only transportation of goods. Fundamental to that effort are the following major projects initiated by and under the oversight of Union County:

- The County and the State of New Jersey worked together to preserve the former Rahway Valley and Staten Island railroad corridors. The County has contracted with the Morristown and Erie Railway to rehabilitate and operate these rail lines. The County is working with the railroad to attract new rail-oriented businesses to this primarily industrial corridor and to offer rail and intermodal services to businesses already located there.
- The County In Partnership with New Jersey Department of Transportation, NJ Transit and Washington Group International is advancing the state's first Private/Public Partnership to build and operate a 5.8-mile light rail line between Newark International Airport, the port Area and midtown Elizabeth, and eventually extending west to Cranford.
- The county initiated a major port access improvement project known as the Kapkowski Road Improvement / North Avenue Corridor Improvement Plan

which will provide an exclusive Port access road to Port Newark/Elizabeth. This project is a Congressionally designated TEA-21 initiative under the oversight of the County and a major component of the proposed Liberty Corridor program recently announced by Congressman Menendez. The Liberty Corridor program will contain a series of linked transportation improvements which will enhance the movement of goods to, from and within a corridor stretching roughly from the Hudson County Hudson River waterfront in Northern New Jersey to the Camden County waterfront in South Jersey on the Delaware River.

- The county has identified a 400-acre plus area in Linden along the Arthur Kill to become a global freight village. This concept is the clustering of industries and businesses that have a symbiotic relationship and can share services and facilities to increase efficiencies. The County conducted a study which identified the suitability of implementing this concept in a brownfield area that would support an industrial and warehousing complex focusing on international trade. This project cannot succeed without appropriate levels of rail and truck service. It also lies within the recently announced Liberty Corridor.

A logical component for the movements of goods is the rail system. It is the opinion of the County of Union that the Class I operators serving the area, both past and present, have fallen far short in making rail freight play a significant role in the improvement of existing condition both in the area of vehicles on the road and contributing to the quality of life in our region.

We would like this opportunity to point out the following areas where the lack of initiative and action by the Class I's has negatively impacted our County. We recognize that today's hearing is focused on the specific issues related to the split up and acquisition of Conrail at the time of the Board's approval of the transaction. However, a number of problems have emerged pursuant to the creation of the Conrail Shared Assets Organization related to the overall movement of freight in the region which we feel need to be addressed. They are intertwined with the Conrail split-up and acquisition are included in the written testimony below. However, this hearing presents broader policy issues which should be the subject of a separate proceeding the STB should initiate.

### **Issues**

The Split-up and Acquisition of Conrail into NS and CSX and the creation of the Conrail Shared Assets Organization was intended to achieve two major goals in Northern New Jersey: (1) Competition and service options would make rail service more competitive with truck and other modes and thus attract goods back to rail movement; and (2) An extensive and well executed marketing and industrial development effort would emerge in this new competitive atmosphere bringing in new businesses into this area. These actions would result in reducing the estimated 90% truck market share of interstate goods movements into and out of Northern New Jersey.

In order to achieve these goals, the rail freight infrastructure would be altered by (1) creating a Shared Assets Area whereby a jointly-owned neutral Conrail would handle all switching and local service to the Port facilities and local businesses; (2) dividing up between NS and CSX major serving yards in the Shared Assets Area; (3) identifying the major routes into the core area to be used jointly by the two carriers to reach their separate main lines outside with the Shared Assets Area and (4) fostering competition by ensuring short lines with access to both Class I carriers. All of this was to be achieved without denigrating NJ Transit and Amtrak Service on lines hosting both freight and passenger service.

To date, we believe that these goals have fallen far short. While the extensive environmental impact analysis conducted as part of this transactions may have correctly identified increased traffic flows and while there has been an increase in rail traffic particularly on intermodal movements to and from Port facilities transaction has not addressed the changed and changing market place. Rail traffic is up, but truck haulage is up even more. We believe that there are endemic problems that need to be addressed before this region experiences the kind of rail renaissance that will have a significant impact on goods movement.

I wish to elaborate on five key themes to describe the shortcomings of the transaction and what corrective actions need to be considered in an extensive and intensive dialogue among the key agencies in the region. I note that:

***The Conrail Shared Assets Area has inherent structural problems that need to be addressed-***

The establishment of the Conrail Shared Assets Area has resulted in the creation of primarily an invisible rail operator that primarily functions to provide neutral switching and local freight service for CSX and NS. Thus rail customers located in the Shared Assets Area have access to both railroads, effectively ending Conrail's 22-year monopoly on rail freight service in Northern New Jersey.

Conrail Shared Assets Organization is not a jointly owned terminal railroad with its own marketing and sales force and does not quote rates. It is an operating entity only. While it has successfully provided that service, it has fallen short in several respects.

Evidence indicates that it is a cost center and not a profit center for the joint owners; thus, the tendency is to keep its service to a minimum. In fact there is some corroborating evidence to show that there is actually a hidden surcharge for freight into the Conrail shared Asset Area to offset higher operating costs.

The routings and interchange in and into the Shared Asset Area appear to maintain arcane patterns. We have heard of freight moving from one part of the Shared Asset Area to another by first going to and returning from Pennsylvania. It would be more appropriate to elaborate on this issue in a follow-up submission, which details this and other post transaction issues.

While Conrail routinely provides local services over a defined set of lines, because of its cost structure and non marketing function, it has to provide service over routes that are not necessarily going to return a profit. They are low density and may be less prone to develop into large volume customers sought out by the Class I carriers. Thus, service remains static and freight development is non-existent.

#### ***Short Haul Goods Movement to and from Port Areas***

There is a significant opportunity for the use of rail to move goods to and from the port areas to distributions centers within the metropolitan area. To date the Class I's have made no attempt to play a role in this area. This is a major emerging issue, which the county feels needs to be addressed in greater detail outside of this proceeding.

Consideration needs to be given to implementing The Port Inland Distribution Network as proposed by the Port Authority of New York and New Jersey.

In Union County, rail lines without the density or marketing thrust of the Class I's should be turned over or subcontracted to short line operators. This is the only way which rail alternatives can be made available to small and medium sized businesses that are located on the variously owned lines in Union County and are related to port activity.

The changing manufacturing base and distribution needs now demand a closer look at short haulage of goods. Manufacturing and distribution businesses are moving closer to their market places. Supplies need to come into this region by rail once again.

A major plastics production facility recently opened in Union County. Distribution within Union County and to surrounding counties where small plastics manufacturers are located in abundance can occur by rail. We want to set up a regional distribution system by rail, but can't. The tracks are there, but the institutional issues and structure of the Shared Assets Area prevent this from being implemented.

#### ***Aggressive Marketing Effort to Develop New Rail Customers***

Although a significant amount of heavy industry has left the region, the need for the transportation of goods has increased dramatically. We see a strong commitment is needed to market rail services in this area. The lack of this effort is evidenced by the absence of a sales presence that is neither located within New Jersey or has a rudimentary knowledge of the state. Also, outreach to government and industry groups is non-existent. These are the various organizations that can assist the Class I's in the development of a customer base. This has not taken place.

While certain heavy industrial businesses have diminished, other industrial activities have taken their place. I already mentioned Plastics, but food preparation and distribution is another area of expansion. We are currently working with a food purveyor who would consider locating in Union County to package and distribute soybean oils in the New York Metropolitan area. Rail service is a must. This is a small business, but rail

dependent. At full production, 50 new jobs are anticipated. We learned of this new business and rail customer by accident.

Realtors, government agencies and economic development personnel are in the dark about rail service. This has to change if railroads are to have an impact on the way development personnel on the local level think about the railroad in their town. Industrial sites and brown fields abound in Northern New Jersey but it takes work and commitment to make rail relevant to the economic development process.

#### ***Utilizing Short Line Operations for Medium & Small Rail Users***

We believe that the short line railroads can play a significant role in the transportation of goods in the metropolitan area. Short Lines are uniquely suited to address this market and it is strategically important that they become an integral part of the network of goods movement. A full, open and fluid relationship between the Class I's and the Short Lines is essential to having rail transportation as a viable alternative to the trucking of goods.

Union County has large landmasses on its eastern sides. These are conducive to attracting large volume rail customers. Smaller properties abound in the middle and western sides of the county. These are more conducive to small and medium size companies. Short lines would better serve these properties.

If our industrial base is to be preserved in these more suburban locations and quality of life issues such as congestion mitigation and reduction in truck movements is to be addressed, then short line service on what are essentially light density lines needs to occur.

We recognize there is a fear of diversion of traffic by the Class I railroads when short lines are created as an alternative rail service. However, in a practical sense, this should be a win-win situation for all parties. We are ready to work with the Class I railroads on this issue.

#### ***Sighting of Intermodal Facilities Close to Market***

For the most part, the Class I's have located their intermodal facilities based on expedience rather locations that are strategically located in close proximity to their markets. This course of action has continued to exacerbate the increasing number of trucks utilizing the road network instead of contributing to a reduction.

Recently we learned of a bulk transfer operation that was set up in Pennsylvania. Its customer base is in New Jersey. Additional truck trips are now in the offing for the state and the county. Before this decision was made, Union County, at very least, if not the New Jersey State Economic Development Authority should have been contacted to see if we could have accommodated him since it was a Union County business operation located on a Shared Asset Rail line. Now he is located on one of the Class I's in Pennsylvania.

Thus, there appears to be an effort, to relocate customers and facilities outside the region away from the Shared Assets Region. While these may be legitimate business decisions on the part of the railroads to capture as much traffic on their home lines, there is little or no competitive or countervailing offer that can be made by local or regional agencies unless there are rail alternatives.

### ***Recommendations***

The Split up and Acquisition of Conrail has not significantly moved toward meeting the challenges of the new economy of the region, one based more on short haul movements to, from and within the region and related to importing and exporting activities. Unless a major change in the way rail freight responds in this new market place, the county, the region and the state will be less attractive to the kinds of rail based economic development it is seeking, particularly the redevelopment of brownfields and underutilized industrial properties within rail corridors.

This brings us to the crux of the hearing today: Should the Surface Transportation Board continue the oversight of the Split up and Acquisition of Conrail into CSX and NS? It is our opinion that the oversight should be continued and expanded to address issues raised in our presentation, namely:

- The Conrail Shared Assets area needs to be reevaluated. The Shared Assets area should be reduced in size. A larger role for switching and local services should be given to short line operators with the Shared Assets Area confined to a core terminal area. The primary function of Conrail Shared Assets would be to interline rail traffic between NS and CSX and to serve the larger customers within the Class I's marketing parameters. This new Entity could be given a marketing function and perhaps be operated as a for profit independent terminal railroad.
- Within the restructured core terminal area, The Shared Assets Organization must not become a third carrier between short lines and the Class I carriers. To this end, short lines should be able to access directly Class I yards and interchange points.
- A regional and interregional approach needs to be developed for short haul intrastate and interstate movement of freight by rail. A greater role must be given to providing opportunities for short lines and short haul arrangements over a core system. A starting point would be the Port Authority Port Inland Distribution System as well as concepts put forth in recently completed New Jersey Department of Transportation Partway Extensions Study.



- The Class I's should redefine their marketing parameters. If the small to medium size customer and short haul markets are outside of their business goals, then a core freight system should be developed to serve that market place. In this restructuring, the lighter density and underutilized lines, especially those lines owned by NJ Transit and served by Conrail Shared Assets would be given over to class III rail operators.
- The STB in conjunction with the State of New Jersey should be evaluating the primary and secondary main lines into the core Northern New Jersey terminal area with the goal of redefining the core mainlines for current and future growth of rail freight. While there is currently a two-phased plan for improvements to remove bottlenecks, this does not address the negative impact this could have on communities. Serious consideration should be given to building new routes into the core area to mitigate the impact on commuter rail and grade crossings.
- As part of reevaluation of the Shared Assets Area, consideration must be given to how the New York Metropolitan Area rail system is integrated into the anti-terrorist and homeland security plans for the region.

Federal support would be needed to fulfill these goals. Much like the Mid-Atlantic Rail Corridor project identified the bottlenecks in the Route 81 and 95 corridors, Establishing a core Shared Assets Area and the mainlines to feed it must be part of a major plan for this region. The goal should be to create a rail infrastructure that can serve a variety of marketing functions, which supports the goals of the Liberty Corridor and the Metropolitan Planning Organization.

A bold approach needs to be taken. It requires an understanding of the New York Metropolitan Area freight market. We urge the Surface Transportation Board to encourage the development and implementation of such a plan among the railroads and agencies in the region.

This concludes my remarks. Thank you again Mr. Chairman for allowing me to have this opportunity to address the Board. I will be happy to answer any questions you may have at this time.